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R 75-139
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75-134

May 27, 1975

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ARIZONA ATTORNEY GENERAL

Honorable James P. Walsh
Arizona State Senate
State Capitol
Phoenix, Arizona 85007

Dear Senator Walsh:

You have requested our advice with respect to the appointment of deputy registrars by the County Recorder, including specifically:

- 1) whether a county recorder may appoint deputy registrars without regard to party when requested to do so by a court or city clerk, and
- 2) whether a county recorder has any discretion to refuse to make such appointment when properly requested by a court or city clerk.

The appointment of deputy registrars is governed by A.R.S. Section 16-141 which provides for two distinct methods of selection and appointment by the County Recorder. Subsections A and B mandate the appointment by the Recorder of specified numbers of deputy registrars from lists submitted by the county chairman of each political party. The Arizona Supreme Court has held that the discretion of the County Recorder under this method is limited, and that the language of subsection E which states in part, "Nothing in this section shall prevent a county recorder from refusing for just cause to appoint or reappoint, or from removing for just cause, a deputy registrar" should not be construed as allowing unreasonable delay or delay for education and testing of applicants. Marston v. Superior Court, 100 Ariz. 209, 507 P.2d 971 (1973).

Subsection D, which is the subject of your inquiry, provides an additional method for appointment of deputy registrars, providing:

Honorable James P. Walsh
May 27, 1975
Page Two.

In addition to the deputy registration officers appointed under the provisions of this section, the county recorder shall, upon the request of a court, an office of a political party, a political campaign headquarters, an office of a city clerk or an office of an incumbent member of congress appoint therefor such number of additional deputy registration officers as he deems necessary or advisable. As used in this subsection "political campaign headquarters" means a building, office or residence that is easily accessible to the public and is used officially as a political campaign headquarters, by a candidate for any office other than that of a precinct committeeman.

Subsection D contains no requirement that appointments be considered or made by reference to party affiliation. In fact, the language of the section, providing for appointments at the request of specified groups, both partisan and non-partisan, would suggest that appointments could reflect the wishes of the requesting office. The only suggestion that appointments under subsection D must be made by reference to party affiliation arises from the language of subsection B which provides:

Before making an appointment of any deputy registrar, the county recorder shall request the county chairman of each political party to recommend persons for appointment, and if a county chairman within ten days of such request supplies a sufficient number of names of persons in his party in a given precinct who are otherwise qualified, the persons appointed shall be selected from those so recommended. If a county chairman supplies one or more names for a precinct, but less than the number allowed, the county recorder shall appoint those persons so recommended.

Notwithstanding use of the modifying adjective "any", it appears clear from the context of subsection B that it applies only to the partisan appointment procedure spelled out in subsection A and not to requests made under subsection D. The language of subsection B specifically mandates selection, on a precinct basis, from lists submitted by county chairmen; application of that directive to discretionary selection under

Honorable James P. Walsh
May 27, 1975
Page Three.

subsection D would yield at worst an incomprehensible result and at best a meaningless act, since nothing in subsection D would require the use of the subsection B recommendations. Furthermore, the language of subsection D, providing for appointments "In addition to the deputy registration officers appointed under the provisions of this section . . ." [sic] additionally suggests that subsection D should be construed separately from subsections A and B. Accordingly we conclude that appointments under subsection D may be made without regard to party affiliation.

The extent to which subsection D requires the appointment of additional deputy registrars is not easy to ascertain. Arguably the specific enumeration of groups and offices which can make such a request, read with the language "shall . . . appoint . . . such number . . . as he deems necessary or advisable" mandates the appointment of at least one deputy registrar pursuant to a valid request from a qualified group or office. The repeated use of the word office, apparently in the geographic sense, and the definition of "political campaign headquarters" also seems to suggest legislative intent to make at least one deputy registrar easily available to each such location as described in the statute. However, the statute does not, in our view, mandate the appointment of specific numbers, or even more than one, pursuant to a valid request from a qualified agency. The language of subsection D manifestly gives the County Recorder broad discretion, the exact extent of which it is difficult to predict. See, however, Marston v. Superior Court, supra, (restricting the discretion of the County Recorder under subsection B and stating: "The public expects the county recorder to exercise mature judgment and act in a reasonable manner upon the facts known by him.").

Sincerely,

Bruce E. Babbitt
Attorney General

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